IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : December 13, 2007

1. **CWP No.16545 of 2004**

   Pardeep v. State of Haryana & others

2. **CWP No.18588 of 2004**

   Rizak Ram & others v. State of Haryana & others

3. **CWP No.18672 of 2004**

   Mange Ram & others v. State of Haryana & others

4. **CWP No.18814 of 2004**

   Rattan Lal & another v. State of Haryana & others

5. **CWP No.16832 of 2004**

   Dharam Pal & others v. State of Haryana & others

6. **CWP No.16833 of 2004**

   Bijender Singh v. State of Haryana & others

7. **CWP No.16848 of 2004**

   Daryao Singh & others v. State of Haryana & others

8. **CWP No.16849 of 2004**

   Mahesh Dutt v. State of Haryana & others

9. **CWP No.16851 of 2004**

   Mahender Singh & another v. State of Haryana & others

10. **CWP No.20308 of 2004**

    Bijender Singh & others v. State of Haryana & others

11. **CWP No.407 of 2005**

    Daya Nand & others v. State of Haryana & others

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : **Mr.S.C.Kapoor, Sr.Advocate with**
Mr.Harminder Jit Singh, Advocate
for the petitioners.

Ms. Ritu Punj, DAG Haryana

Mr.Gaurav Mohunta, Advocate
for HUDA.

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

By this common order, we propose to dispose of CWP Nos.16545, 18588, 18672, 18814, 16832, 16833, 16848, 16849, 16851, 20308 of 2004, and 407 of 2005.

The petitioners herein impugn the notifications, issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short herein after referred to as "the Act"), dated 29.11.2001 and 28.11.2002 respectively.

Counsel for the petitioners contends that the petitioners are owners in possession of separate parcels of land, situated in village Kundli, Tehsil and District Sonepat. The petitioners have constructed houses, a saw mill, a poultry farm, raised cow sheds etc. and have been residing or carrying on their business therein. The State of Haryana, without considering the nature of structures, existing on the land, issued a notification, under Section 4 of the Act, dated 29.11.2001, proposing to acquire land in villages Nagal Kalan and Kundli for the ostensible public purpose, namely, for the development and utilization as residential and commercial Sector 58, Sonepat. The petitioners filed objections, under Section 5A of the Act on 24.12.2001. The government, however, proceeded

to issue a declaration, under Section 6 of the Act, dated 28.11.2002, without deciding objections by the Collector. However, the house of one Bije s/o Giani Ram was released from acquisition but the petitioners' prayer for release of their houses, saw mill, poultry farm, cow sheds, was declined. As a result, the petitioners preferred a representation to the government requesting for release of their land. The District Town Planner, Sonepat forwarded his comments to the Administrator, HUDA, vide a communication, dated 7.3.2003, detailing the constructions, raised by the petitioners. Despite this report, the Land Acquisition Collector served a notice, under Section 9 of the Act, requiring the petitioners to submit their respective claim qua compensation.

It is argued that as the petitioners have raised constructions, in the shape of houses, a poultry farm, a saw mill, cow sheds, dharamshala etc. prior to the issuance of the notification, under Section 4 of the Act, the government is obliged to release their land or at least their houses. It is further argued by reference to a site plan that the area, shown in yellow, has been released to a builder. The petitioners' lands, shown in pink, fall within the released area. This land cannot be utilized by the respondents for any purpose and would eventually be diverted to the builder.

It is further argued that the respondents have released the house of Bije s/o Giani Ram and the vacant land to a builder. The petitioners, therefore, pray that the State of Haryana be directed to release their land/houses/structures etc.

Counsel for the State of Haryana, however, submits that the right to acquire land, whether vacant or constructed, is absolute. However, the State of Haryana, in order to alleviate hardship to land owners, framed a

policy that guides its discretion to release land, namely, structures like houses, running industries, licenced areas belonging to builders etc. The petitioners' prayer for release was duly considered and in CWP No.16545 of 2004, five marla of constructed area has been released. The poultry farm and the saw mill could not be released as they cannot be accommodated in residential/commercial Sector 58, sought to be established after acquisition. As regards CWP No.16848 of 2004, it is submitted that a survey of the land revealed 26 single room quarters for labourers and 2 shops. As regards the other petitions, it is argued that in CWP No.16851 of 2004, there was no construction on the date of the issuance of the notification, under Section 4 of the Act. As regards CWP No.20308 of 2004, it is submitted that a house constructed in five marla and belonging to Pradeep s/o Balbir Singh has been released. In CWP Nos.16832 and 16833 of 2004, the land is vacant. In CWP No.18814 of 2004, 1407 sq. feet of `C' class structure was in existence but it was not released. It is argued that mere release of a few structures would not entitle the petitioners to pray for release of their structures, even if existing on the date of issuance of the notification, under Section 4 of the Act.

With respect to the other assertions, counsel for the State of Haryana submits that the land, shown in yellow, was released, as it was licenced area, belonging to a private colonizer. Though some land of the petitioners falls within the area of the colonizer, HUDA would be able to utilize the same. As regards the assertion that objections, under Section 5A of the Act, have not been decided, counsel for the State of Haryana, by reference to the record, states that this assertion is incorrect.

We have heard learned counsel for the parties and perused the paper book.

Counsel for the petitioners asserts that as their structures i.e houses, poultry farm, saw mill etc. were in existence on the date of the issuance of the notification, under Section 4 of the Act, the Government was obliged to release their lands from acquisition. We have carefully considered this plea and express our inability to accept it. The Land Acquisition Act does not draw any distinction between vacant land or land bearing structures. The power to exempt land, subject matter of acquisition, vests with the State and falls within the policy making domain of the State. A Court cannot impose its view of the necessity to acquire or the need to release land. The State has framed a policy that guides its discretion to release land bearing structures. This policy is, however, subject to certain caveats, primary among them being that the structures should be in existence on the date of the issuance of the notification under Section 4 of the Act and the released land should be capable of adjustment, within the proposed planning. A plea for release, duly considered within the parameters of the policy, would only call for interference where the decision is demonstratively illegal, arbitrary, unreasonable, discriminatory or mala fide. In order to fortify the above conclusion, a reference to a judgment of the Hon'ble Supreme Court in M/S Anand Buttons Ltd etc v. State of Haryana and others, AIR 2005 SC 565, would be appropriate :-

> " **13.** It is trite law that not only land but also structures on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some

> construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the authorities concerned. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief."

Applying the above principles to the facts of these writ petitions, we are satisfied that the petitioners' plea for release was duly considered and rightly rejected. The poultry farm and the saw mill were not released as they could not be integrated with the proposed planning i.e setting up of residential and commercial Sector 58, Sonepat. In another petition, the petitioners have constructed two shops and single room tenements for labourers, which cannot be adjusted in the proposed planning.

Another significant aspect is that the petitioners' plea that the structures, existing on the acquired land, are houses, remains unsubstantiated. It is true that these structures exist but whether these are used as houses, is a matter that has not substantiated. No material was placed before us as would suggest that these structures were being used as houses and the petitioners were residing there. The petitioners have failed to adduce any material like electricity bills, water connections, ration cards,

voter identity cards etc. that are normal attributes of residence and, therefore, we cannot hold that the structures were being used as houses.

Another submission that as a part of the land is surrounded by the land released to a private colonizer, it cannot be used by HUDA, does not merit acceptance. The acquired land, as also the released land, would eventually be integrated into the proposed Sector 58 and merely because a small part of the acquired land is sandwiched between the released land would not raise an inference against the acquisition. Its use would be determined by HUDA, in accordance with the final planning.

In view of what has been stated above, as we find no illegality or infirmity in the acquisition proceedings or in the decision of the Government not to release the petitioners' land, we dismiss these writ petitions with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

December 13 , 2007
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